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July 8, 1985

Mr. Christopher J. Daggett
Regional Administrator
United States Environmental Protection Agency Region II
900 J.K. Javits Federal Building
New York, New York 10278

Re: Duane Marine Salvage Company
Administrative Order No. II-CERCLA-50102

Dear Mr. Daggett:

Thompson & Knight has been asked to represent Cosden Oil and Chemical Company (which has recently been merged into American Petrofina Company of Texas, and will now be known as the Cosden Chemical Division of Fina Oil and Chemical Company) with respect to the above referenced matter.

It is my understanding that under the above referenced Administrative Order, Cosden is required to communicate to you by today whether or not it intends to comply with the order. The purpose of this letter is to advise you that while Cosden has offered to contribute what it believes to be its fair share of the cost for undertaking the work required by the Administrative Order, that offer has been rejected by the Steering Committee for this site thereby unilaterally excluding Cosden from further involvement in accomplishing the purposes of the order. It is Cosden's understanding that the work required by the Administrative Order will go forward even though the other parties to the Administrative Order are excluding Cosden from involvement with those activities. Therefore, there has not been, nor will there be, any violation of the order, nor will EPA be required to undertake any removal or remedial action because of the failure of parties to an administrative order to undertake such activities.

Cosden's exclusion by the group from contributing to underwrite the costs of the removal action stems from a difference of opinion over the treatment of stormwater in the allocation process. According to EPA's records, Cosden is

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alleged to have sent approximately 771,740 gallons of material to the Duane Marine site from Cosden's facility in East Windsor, New Jersey. This total includes approximately 22,000 gallons of material EPA has attributed to Eastern Sterling Plastics, a company acquired by Cosden and which was under Cosden's ownership and control at the time the material in question was shipped. This volumetric information was apparently obtained from manifests provided by an officer of the company that operated the Duane Marine site. Until the last few weeks, Cosden has not been provided clear copies of those manifests. Upon review of the manifests, it was determined they differed from invoices received by Cosden from Duane Marine, in that the invoices indicate 745,115 gallons of material were shipped from Cosden's facility. This total was included in Cosden's 104e response to EPA dated December 10, 1984. Nevertheless, to date, EPA has still not corrected its computer printouts by substituting the lower volume.

It is also Cosden's position that stormwater, which represents 696,000 gallons of the total volume shipped from the Cosden plant, is not a hazardous substance and should not be included in the computer printouts generated by EPA. However, in a meeting I had with Margaret Thompson on Thursday, June 20, 1985, I was informed that it is the position of Region II that if materials to be shipped to a hazardous waste site include any amount of a substance designated as hazardous under § 311 or § 307 of the Clean Water Act, even if the material containing the hazardous substance is not a hazardous waste, (as is the case with Cosden's stormwater) then the entire volume of material is considered a hazardous substance. While I believe this view incorrectly interprets the definition of hazardous substance under CERCLA, I was informed by Ms. Thompson that it was the established view of Region II, and that it would be applied to any request by Cosden to reduce the volume of material EPA believes the company sent to the Duane Marine site. In light of that advice, Cosden has not filed a petition for delisting with Region II.^{1/}

^{1/} Cosden also requests that this letter be considered as an objection to the decisions made by Region II to remove certain companies as respondents to Administrative Orders involving Duane Marine. From the information available to Cosden, it does not appear that any of those companies have been able to establish that the material they supposedly sent to the Duane Marine site did not come in contact with and,

I was also informed by Ms. Thompson in my June 20, 1985, meeting that Region II would not become involved in allocation questions. Those issues had to be worked out entirely by the private parties.

Finally, I was denied access during my visit with Mr. Thompson to information regarding the nature of the waste supposedly sent to the Duane Marine site by other potentially responsible parties. Such information was sought in order to allow Cosden to more accurately assess its position on the allocation issue. The denial of such material has had the effect of making allocation negotiations considerably more difficult.

While Cosden does not feel that an imminent and substantial endangerment to the public health, welfare or the environment exists at the Duane Marine site, it has sought since December of 1984, to work in a good faith with EPA and the other respondents to the various orders that have been issued, in an attempt to expeditiously resolve this matter. Cosden will continue to work with all parties in an attempt to reach a compromise and settlement of their differences. In the meantime, it would be extremely beneficial if EPA could provide the information previously sought by Cosden concerning the nature of material EPA believes was sent by each respondent to the site.

In addition, Cosden would request the opportunity to meet with you to discuss the allocation problems at this site, as well as what Cosden believes is an incorrect application of the definition of hazardous substances to its stormwater by Region II. If you believe that such a meeting would be beneficial or if you should have any questions, please do not hesitate to contact me.

Yours very truly


James B. Harris

JBH/JB

cc: Margaret Thompson

1/ (Cont. from Page 2)

therefore, does not contain a substance listed as hazardous under § 311 or § 307 of the Clean Water Act. Under the Region II policy applied to Cosden, the failure to make such a showing would prevent your agency from removing a company as a respondent.